U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THERESE J. SANNAR and DEPARTMENT OF VETERANS AFFAIRS, WALLA WALLA VETERANS HOSPITAL, Walla Walla, WA

*Docket No. 02-2237; Submitted on the Record;*
*Issued May 12, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on February 5, 1996; and, if so, (2) whether appellant met her burden of proof to establish that she had any disability after February 5, 1996 causally related to her employment injuries.

The Office accepted that appellant incurred a left sacroiliac strain, temporary aggravation of spondylosis at L5-S1 and a temporary aggravation of preexisting lumbar degenerative disc disease as a result of her federal employment.[1] The Office also accepted a back strain as a result of a June 4, 1978 work injury[2] and a left sacroiliac strain as a result of a February 18, 1983 work injury while appellant worked as a licensed practical nurse. Appellant became a registered nurse in 1984. Appellant was involved in a nonwork-related motor vehicle accident on January 4, 1986 and sustained a neck injury. Appellant filed a notice of traumatic injury for a February 24, 1988 injury after assisting a patient. She experienced pain in her neck and right arm numbness. Appellant filed a recurrence claim on September 1, 1988, noting that on August 27, 1988 she had a recurrence of disability due to her accepted work injuries.

Appellant worked limited duty in July 1995 as a medical clerk, for two hours per day, five days a week. She returned to limited duty on July 10, 1995. The Office paid wage-loss compensation for six hours a day. At the time of appellant's return to duty, she was limited to working a maximum of 2 hours per day, paperclipping sheets of paper and 3" X 5" cards, together. The record reflects that appellant never completed a single work shift; took a 20 minute break after 5 minutes of paperclipping and called in sick.

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[1] Appellant's physical conditions, which are not related to her federal employment and have not been accepted by the Office include: C5-6 degenerative disc disease; obesity; diabetes; arthritis in base of her thumbs; and any psychiatric or psychological conditions.

[2] At the time, appellant was 31 years old.

In a July 27, 1995 report, Dr. Phyllis Henderson, a Board-certified psychiatrist, indicated that appellant presented with symptoms of depression and pain, which was correlated to a series of work-related back injuries, unemployment, death of a 19-year-old son by suicide and death of a subsequent neonate to a severe congenital heart defect. Dr. Henderson diagnosed major depression with mild psychotic features and a pain disorder. She opined that appellant was not capable of maintaining any substantial gainful work.

In an August 3, 1995 report, Dr. Jimmy D. Angell, a clinical psychologist, indicated that he had treated appellant since May 1993. Dr. Angell stated that appellant deteriorated considerably over the last several months as she became frustrated with the Office. He opined that appellant was disabled. Dr. Angell did not indicate if any disability was causally related to appellant's accepted back conditions.

By letter dated August 15, 1995, the Office referred appellant for a second opinion medical panel evaluation by Drs. James MacD. Watson, a Board-certified neurologist, John M. Ballard, a Board-certified orthopedic surgeon and Eugene E. Klecan, a Board-certified psychiatrist.[3]

In an October 5, 1995 report, Dr. Gary L. Sultany, a Board-certified internist specializing in rheumatology, reviewed the medical evidence of record and set forth his examination findings as part of the medical panel's review. He opined that appellant had bilateral degenerative joint disease, thumbs, left greater than right, not work related, secondary to osteoarthritis; cervical degenerative disease; and lumbar spondylosis, of which Dr. Sultany stated that he had no opinion about the work relationship. He opined that appellant clearly had a psychological overlay, which impaired an objective evaluation. Dr. Sultany noted that writing and grasping with the left hand would be difficult. Using a pen with the right hand was possible but only in circumstances where appellant is not required to write continuously.

Dr. Klecan issued an October 6, 1995 report, noting that he observed the physical examination in its entirety and he interviewed appellant on an individual basis. He stated that appellant's history included normal grief at losing a teenage son and an infant daughter and a miscarriage. Appellant's subjective complaints focused primarily on pain sensations. Dr. Klecan noted that appellant's documented reports of subjective symptoms to other physicians were self-contradictory. Her psychiatric evaluation by Dr. Henderson listed only vague symptoms of fatigue and anxiety, which were nondiagnostic, plus claimed suicidal feelings. Dr. Klecan stated that his psychiatric evaluation was consistent with a denial of depression as noted by Dr. Gary Schoepflin's 1994 report. Appellant's reported daily activities were inconsistent with any clinically significant degree of depression. Dr. Klecan stated that appellant's mental status was not depressed. Appellant was guarded, in control and overacting during physical examination, verbally and repeatedly revealing her own underlying belief that she is and had been a victim. Accompanying feelings of righteous anger were expressed. Cognitive functions were reported as normal. The physician opined that appellant had the mental status of a person who believed herself to be a victim. Dr. Klecan diagnosed no mental

[3] In a letter dated October 16, 1995, appellant's attorney objected to both the statement of accepted facts and the list of questions to be resolved.

disorder at Axis I. On Axis II, a personality disorder was neither confirmed nor ruled out. Avoidant and passive aggressive traits appeared to be present and could not be ruled out. Victim beliefs appeared to be cherished and there were secondary gains to her claimed illnesses and symptoms. Dr. Klecan opined that no psychiatric symptoms, impairments or disorder was found that would preclude appellant from working at whatever occupation she wished, within the limits of her training and experience and physical capacities.

In an October 6, 1995 medical panel report, Drs. Watson, Ballard and Klecan, advised that appellant had presented the panel with her attorney's letter of October 3, 1995 offering what he believed to be corrections and additions to the July 31, 1995 statement of accepted facts. The panel commented that there was no basic disagreement with their understanding of the facts. The panel reviewed appellant's medical treatment history and reported findings on physical examination. The x-rays showed advanced degeneration at the L5-S1, which by comparison with other records, dated to at least 1978. Imagining studies revealed a calcified herniated disc at that level, not involving nerve root compression. The panel noted that appellant had osteoarthritic changes in at least one thumb. In response to questions posed by the Office, the medical panel found that the accepted low back strain was self-limited. The panel found no evidence that a sacroiliac strain ever existed in fact except by inference and there were no findings that would suggest such a phenomenon. The panel found that appellant had recovered from the effect of any strain. With regard to the diagnosed degenerative disc disease, there was objective evidence either neurologically or orthopedically to indicate that appellant's employment specifically hastened the progression of her degenerative condition, particularly with consideration of increasing obesity and the general activities of daily life. The panel stated that as appellant's condition had been described for a number of years as related to a herniated disc without nerve root compression, it was expected that the degenerative spine condition would either stay in that condition or progress for the rest of her life, without employment or other specific injury involved. The panel noted that as appellant was obese, the prospects for continuing degeneration were great and it appeared her degenerative spine condition reached its current status long ago. The panel opined that appellant probably reached her maximum medical improvement when she was first examined by Drs. Snodgrass and Neitling in April 1993 as there was no evidence of progression since that time.

As to the issue of whether appellant's limited duty would impact her conditions, the panel stated that there was no evidence from the work description, which would impact her underlying condition. It was noted that appellant continued to drive and had recently qualified as a master food preserver, after taking a course of instruction**.** The panel noted that the activity involved in becoming a master food preserver, as described by appellant, was not strenuous or taxing. They opined that there was no way of measuring any physical evidence to indicate that this activity would perform a work-hardening phenomenon.

The panel stated that it was their collective opinion that appellant's physical capacity was such that she could perform the limited-duty tasks outlined, insofar as her lumbar and lumbosacral condition were considered, on an objective neurologic and orthopedic basis. They cautioned that the other painful and disabling phenomena, of which appellant complained might interfere with her ability to perform such tasks comfortably, but there were no orthopedic or neurologic prohibitions.

In an addendum dated October 13, 1995, Dr. Sultany stated that limited-duty work would not exacerbate appellant's thumb problem. Dr. Sultany indicated that her food preserver duties might have aggravated her symptoms temporarily. He opined that appellant's lumbar spondylosis was age related rather than trauma related, but he would defer opinion on this to Dr. Ballard.

In a December 28, 1995 report, to appellant's attorney, Dr. John Rogers, a Board-certified family practitioner, opined that since appellant still had pain, the temporary aggravation of degenerative disc disease had not resolved but was ongoing. Dr. Rogers advised that he was unable to answer the question of whether appellant had degenerative disc disease prior to becoming employed by the Department of Veterans Affairs (VA). He stated that appellant continued to experience chronic pain, but he could not render a decision on whether it was employment related. He stated that he could not answer whether appellant's employment at the VA hastened the degenerative disc disease or whether she incurred a left sacroiliac strain as a result of VA employment. Dr. Rogers stated that if appellant was suffering from a job-related injury and she continued to have chronic pain, then her job-related injury had not resolved; but if her chronic pain was not job related, then the pain was simply related to degenerative disc disease and/or other arthritic pain. Dr. Rogers stated that as he was trained in family medicine, there was nothing more he could contribute, but an orthopedist or a neurosurgeon might be able to provide a more objective answer.

In a February 1, 1996 letter, appellant's attorney contended that the statement of accepted facts and the questions sent to the medical panel were prejudicial. He argued that the Office erred in not accepting depression as employment related and that the medical evidence supported that appellant had no back pathology/symptomatology prior to her employment or her first injury in 1978.

By decision dated February 5, 1996, the Office terminated appellant's compensation benefits on the basis that the weight of the factual and medical evidence established that she had recovered from the effects of her federal employment injuries.[4]

Appellant, through her attorney, requested an oral hearing, which was held on April 15, 1999.

In a report dated September 10, 1998, Dr. W. Michael Breland, a physiatrist, reviewed a magnetic resonance imaging (MRI) scan from February 12, 1997, which showed an L4-5 disc protrusion and S1 root deviation and noted appellant's current symptoms and medical history. The physician listed an impression of chronic lumbosacral sprain and sciatica; chronic neck pain and myofascial syndrome; right lateral epicondylitis, stable; right knee osteoarthritis, stable; depression, stable; costochondritis, stable; and sleep apnea. In a September 18, 1998 report, Dr. Breland stated that he did not go into specific details with regard to what extent appellant's current condition was related to her work injuries. He noted that appellant had prior car accidents, falls and other kind of injuries in addition to her employment injuries. He advised that a review of earlier medical reports indicated that when appellant began working at the employing

[4] On December 21, 1995 the Office issued a proposed notice of termination of compensation.

establishment, she had a normal back and when she left, she was on permanent disability. Dr. Breland opined that it sounded fairly straight forward and he had no further comments.

In a February 12, 1997 report, Dr. J. Timothy Blackwelder, a radiologist, indicated that appellant's MRI scan showed mild diffuse disc bulging at L5-S1with mild neural foramina encroachment bilaterally and slight deviation of the S1 nerve root.

In a February 20, 1997 report, Dr. Timothy L. Keenen, a Board-certified orthopedic surgeon specializing in the spine, reported appellant's status but did not indicate whether her condition was employment related.

In a January 4, 1996 report, Dr. Bernadette Huard, a Board-certified psychiatrist, opined that appellant had major depression, caused by pain due to her orthopedic injuries, including injuries to her back and being pressured to return to work.

Treatment Records from the Walla Walla Clinic were also submitted. An August 1, 1996 note found that appellant had chronic low back pain and neck pain due to degenerative disc disease. It was noted that appellant had not been to work that week. An August 13, 1996 record indicated that appellant's medical problems could be attributed to her morbid obesity.

In a June 9, 1997 report, Dr. Jeffrey Caplan, a Board-certified psychiatrist, noted that appellant related much of her problem to chronic pain to a series of work-related injuries, particularly one in February 1983. Dr. Caplan questioned whether appellant had major depression or just an exaggerated response to pain.

Treatment records were submitted from Dr. Angell. In a July 15, 1994 report, Dr. Angell indicated that he had treated appellant since May 27, 1993 for intense and multiple grief issues resulting from the suicide of her 19-year-old son, the death of a very impaired newborn daughter, a miscarriage and the loss of her nursing vocation due to severe, unrelenting back pain. In a May 11, 1999 report, Dr. Angell noted treatment of appellant through January 28, 1998 for emotional issues around her on-the-job injury and her resultant chronic physical pain and associated depression. Dr. Angell opined that appellant's depression was at least 70 percent due to the severe pain from her employment injury. He diagnosed major depression, chronic, moderate to severe.

In a January 7, 1997 report, Dr. Keenen indicated a complaint of low back, right leg, neck and headache pain with nausea caused by "injuries in 1978, 1983, 1986 and 1988." He diagnosed cervical and lumbar spine pain, chronic and said that the etiology of her symptoms was not clear.

By decision dated June 29, 1999, an Office hearing representative affirmed the Office's February 5, 1996 termination of benefits, finding that appellant no longer had any residuals of her accepted work-related injuries. The Office hearing representative noted that the statement of accepted facts and questions presented to the medical panel were not prejudicial.

By letter dated June 29, 2000, appellant's attorney requested reconsideration and submitted additional evidence and argument.

Medical records from Dr. Thomas A. Passmore, a Board-certified psychiatrist, were submitted. In a clinic note of August 24, 1999, the physician diagnosed "major depression versus somatization disorder." In a June 26, 2000 statement, Dr. Passmore opined that appellant's depression was exacerbated by and related to her chronic pain.

Medical records from Dr. Kerry Kuehl, a Board-certified internist, were submitted. In a clinic note of February 16, 2000, Dr. Kuehl noted that appellant had spondylosis and spinal stenosis and was referred by Dr. Robert Hart, an orthopedic surgeon, for weight loss and an exercise program. Musculoskeletal examination revealed tenderness to palpation over the right upper back, rhomboid major area and also the right sternocleidomastoid muscle group. Full range of motion was noted in her neck. No cervical vertebral tenderness. A mild para-spinalis tenderness in the lumbosacral area was noted. Low and upper back pain, depression and spinal stenosis without radiculopathy were diagnosed. In a June 26, 2000 statement, Dr. Kuehl stated that appellant had significant spondylosis and spinal stenosis, depression, hypercholesterolemia, hypthyroidism, osteoarthritis, herniated disc and low back pain. Depression was secondary to chronic pain, which was related to on-the-job injury. He noted that the 1993 MRI scan showed a herniated disc, which had worsened to the point of significant spinal stenosis.

Medical records from Dr. Robert Hart, a Board-certified orthopedic surgeon, were submitted but did not address causal relationship.

By decision dated July 14, 2000, the Office denied a reconsideration request on the grounds that it was untimely filed and she failed to demonstrate clear evidence of error.

On October 10, 2000 appellant filed an appeal to the Board.[5] By decision dated May 1, 2002, the Board set aside the Office's July 14, 2000 decision, finding that appellant's request for reconsideration was timely filed and remanded the case to the Office to review the evidence under the appropriate standard of review.

By decision dated June 5, 2002, the Office denied modification of the June 29, 1999 decision.

The Board finds that the Office properly terminated appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[6] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[7] The Office' s burden includes the

[5] Docket No. 01-309 (issued May 1, 2002).

[6] *Lawrence D. Price,* 47 ECAB 120 (1995).

[7] *Id.; see Patricia A. Keller,* 45 ECAB 278 (1993).

necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[8]

In the present case, appellant's claims were accepted by the Office for a sacroiliac strain, temporary aggravation of spondylosis at L5-S1 and degenerative disc disease. The Office terminated appellant's compensation on February 5, 1996 based on the medical panel review of Drs. Watson, Ballard, Klecan and Sultany. In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given each individual report.[9]

The Board finds that the weight of the medical evidence regarding the termination of appellant's compensation rests with the opinions of the medical panel physicians, each Board-certified specialist in the appropriate field, who found that appellant had recovered from the accepted strains and aggravations and that she had no psychiatric condition causally related to her work injuries. The medical panel provided comprehensive, well-rationalized reports, in which, they reviewed appellant's history of injury and medical treatment and noted that there were no objective findings to show a continued work-related strain or aggravations of degenerative disc disease or spondylosis. Further, the panel found no evidence that appellant sustained a psychiatric condition causally related to the accepted injuries. The Board notes that the reports of the panel physicians which reviewed and relied on the amended statement of accepted facts dated July 31, 1995 contains sufficient rationale to establish that their medical opinions were based on an accurate factual and medical background.

The July 31, 1995 statement of accepted facts addressed appellant's personal troubles with her children, various attempts to return to work, periods of total disability and her last position of July 10, 1995, following which she stopped work. The statement of accepted facts addressed the accepted employment-related conditions of left sacroiliac strains, temporary aggravation of spondylosis L5-S1 and temporary aggravation of preexisting lumbar degenerative disc disease. Preexisting, concurrent and subsequently acquired conditions not accepted as employment related included C5-6 degenerative disc and claimed psychiatric or psychological conditions.

By letter dated February 1, 1996, appellant's counsel questioned the panel's report, contending that the statement of accepted facts and questions to the panel were improper. He noted that the statement of accepted facts' statement that the spondylosis at L5-S1 was temporary was not confirmed by the Form CA-800, which listed only spondylosis L5-S1 and did not state it was temporary. He noted that the prior statement of accepted facts of February 18, 1983 did not state that the degenerative disc disease and spondylosis L5-S1 were temporary. The attorney argued that the questions posed to the panel specialists was prejudicial to appellant.

[8] *Raymond W. Behrens*, 50 ECAB 221 (1999).

[9] *See Connie Johns*, 44 ECAB 560 (1993).

The Board notes that a conference took place on October 3, 1995 between appellant's attorney and a senior claims examiner, which addressed concerns of appellant's attorney. Although the claims examiner found the attorney's concerns not supported by the record, it was agreed that appellant could take a copy of her attorney's objections to the statement of accepted facts to the medical panel examination. In the panel report of October 6, 1995, the physicians specifically commented that there were no basic disagreement with their understanding of the facts. The panel had access to appellant's entire medical record, including the preemployment physical examination report. The Board notes the purpose of the statement of accepted facts is to set forth facts and accepted conditions, with no medical opinions or rationale. As the statement of accepted facts does not contain any medical opinion, the questions of whether a condition is preexisting, temporary or permanently aggravated, is a medical issue which properly rests with the examining physicians. Accordingly, the Board finds that the counsel's argument that the statement of accepted facts and listed question were prejudicial is without merit.

The Board finds that the medical panel provided comprehensive, well-rationalized reports, which explained their findings on physical examination and psychiatric condition. Their respective and conclusions were supported by objective evidence, or lack thereof. The Board finds that the weight of the medical evidence rests with the reports of the medical panel; therefore, appellant had no employment-related disability on or after February 5, 1996. The Office met its burden of proof to terminate her compensation benefits on that date.

The Board further finds that appellant failed to establish that she had an employment-related disability after February 5, 1996.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.[10] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[11] Causal relationship is a medical issue[12] and the medical evidence required to establish a causal relationship is rationalized medical evidence.[13]

In the instant case, appellant submitted additional medical evidence after the Office terminated her compensation benefits, in which the nonwork-related conditions of depression, chronic back pain, chronic neck pain, degenerative disc disease in the cervical and lumbar spine

[10] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

[11] *See* 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, 45 ECAB 383 (1994).

[12] *Mary J. Briggs*, 37 ECAB 578 (1986).

[13] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

were diagnosed. However, none of the medical reports are sufficient to meet appellant's burden of proof.

In assessing the probative value of the medical evidence in a complex causal relationship situation, it is particularly important that the physician have an accurate factual background. The medical evidence submitted by appellant does not provide a reasoned medical opinion based on a complete and accurate background.[14] Dr. Roger's December 28, 1995 report is not based on a complete factual and medical background and he advised that he could not render a fully informed opinion. His report is specialative in nature. The reports from Drs. Breland, Schoepflin, Huard, Caplan, Angell, Keenen and Warning similarly incomplete or lack accurate factual and medical background. Although Dr. Passmore opined that appellant's depression was exacerbated by and related to chronic pain, there is no indication that he had the benefit of any past medical records, on which to base his opinion other than appellant's reference to the history of injury of when her back pain began. As appellant had preexisting lumbar degenerative disc disease and other ailments concerning her spine, these facts are crucial to assure an accurate medical history. Moreover, Dr. Passmore provided no rationale or discussion regarding the cause of appellant's chronic pain. Although Dr. Kuehl opined that appellant's depression was secondary to chronic pain, which was related to the on-the-job injury, Dr. Kuehl did not present an accurate factual or medical background. The chart notes fail to reflect what history was provided to Dr. Kuehl; rather, his opinion on causal relationship is just reflective of Dr. Hart's thoughts and not of his own and, thus, is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[15] Moreover, Dr. Kuehl is an internist and not a specialist in psychiatric conditions, therefore, his opinion is of diminished probative value.[16] Reports from other physicians did not attribute any condition or disability to an employment injury. The record, therefore, contains insufficient evidence that appellant's disability on or after February 5, 1996 was due to the employment injuries. She has not met her burden of proof to establish that she is entitled to compensation benefits after that date.

[14] *See Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

[15] *See Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

[16] *See Lee R. Newberry*, 34 ECAB 1294 (1983) (medical opinions of physicians who have training and knowledge in a specialized medical field have greater probative value).

The June 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member